



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 10-10271  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Jr., Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2011

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on July 27, 2010, to request a security clearance required as part of his employment with a defense contractor (Item 5). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding that it is clearly consistent with the national interest to grant Applicant's request.

On May 16, 2011, DOHA issued a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DoD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR specified the basis for its decision: security concerns

addressed in the Directive under Guideline F (Financial Considerations) of the AG. Applicant answered the SOR by letter dated June 14, 2011. He denied one of the seven allegations (1.h), and requested a decision without a hearing. (Items 1-4)

Department Counsel submitted a file of relevant materials (FORM)<sup>1</sup> in support of the Government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on August 4, 2011, and he received it on August 15, 2011. He was given 30 days from the date he received the FORM to file a response. Applicant did not submit a response. The case was assigned to me on September 26, 2011, for an administrative decision based on the record.

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's response to the SOR, I make the following additional findings of fact.

Applicant is 53 years of age. He was married and divorced in the mid- to late 1980s. He married his current wife in 1988. He has two children, who are 18 and 19 years of age. He has not served in the military. He received a bachelor's degree in 1997. As of the date of his security clearance application, July 2010, he was employed as a test technician by a defense contractor. (Item 5)

The SOR alleges that Applicant filed a Chapter 7 bankruptcy petition in August 1998, which was discharged in January 1999. He also filed a Chapter 13 wage-earner bankruptcy petition in May 2000, which was dismissed in about August 2000. In addition, the SOR alleges six debts that are currently past-due, which total \$37,319. Applicant admitted five of the six debts. He denies one debt of \$11,060 (allegation 1.h) (Items 1, 4)

At his 2010 security interview, Applicant stated he was overextended on credit before 2008. After 2008, his expenses increased, the economy's downturn affected his income, and his opportunity for overtime pay decreased. His wife's job as a substitute teacher did not contribute greatly to their resources because she did not work during the summers. Since 2008, he has maintained the payments on his mortgage and secured loans, but has struggled with paying other debts. He made credit card payments until he was no longer able to continue. He did pay several credit card accounts using money from his retirement fund. (Item 6)

Applicant filed a Chapter 13 bankruptcy petition in July 2011, "in order to get myself back on track." The case is currently pending. He admits he became overextended on his credit card accounts, and regrets having to resort to bankruptcy to resolve his "financial ineptitude." However, he cites his 28 years of experience in

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<sup>1</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included 12 documents (Items 1 - 12) proffered in support of the Government's case.

materials and structures testing, and opines that he has valuable expertise to contribute in the area. (Items 4, 8)

Applicant denies responsibility for debts to an animal hospital, stating that his pet was injured while being treated there (allegations 1.d and 1.e). He provided no proof supporting his claim. He also denies any knowledge of the \$11,000 debt for an oil company credit card, alleged at allegation 1.h, but provides no further information or evidence that he has contacted the creditor or filed a dispute with the credit reporting agencies. The SOR debts appear in Applicant's credit reports of August 2010 and March 2011. (Items 4, 6, 7, 9, 10)

Applicant's February 2011 personal financial statement shows net monthly income of \$5,765 and expenses of \$2,783. In addition, he listed debts payments of \$1,975. Subtracting his expenses and debt payments (\$4,758) from his income leaves a monthly remainder of \$1,007. He did not list monthly payments on any of the SOR debts. The record contains no evidence that Applicant has sought financial counseling. (Item 7)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>2</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>3</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate or mitigate the Government's case.

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<sup>2</sup> Directive. 6.3.

<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>4</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as her or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>5</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant has a history of delinquent debts. He sought bankruptcy protection in 1998 and 2000. Since 2008, he has again become indebted. In 2011, he again sought Chapter 13 protection in a bankruptcy case that is still pending. His history of failing to meet his financial obligations supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions can potentially mitigate security concerns:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's failure to pay his debts did not occur in the distant past, because his debts are still delinquent. He has filed for Chapter 13 bankruptcy protection, but the case is pending, and it is unknown whether his debts will be successfully discharged through that petition. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20(a) cannot be applied.

Applicant stated his financial problems stem from the economic downturn, his loss of overtime work in 2008, and his wife's lack of employment during the summer, and his overspending. However, his current difficulties are not new. The economic downturn was an event beyond Applicant's control. However, he did not explain specifically how that event affected him financially. Moreover, he has overspent and become financially insolvent in the past, as evidenced by his two prior bankruptcy filings. The file contains no evidence of other circumstances that might have prevented him from being able to resolve his current situation. Applicant receives only partial mitigation under AG ¶ 20(b).

Applicant provided no documentary evidence that he has received financial counseling. Although he disputed three debts, Applicant did not provide evidence that he informed the credit reporting agencies of these disputes. It appears that he has not set up payment plans, or paid any of the SOR debts, despite a monthly net remainder which could have been used for this purpose. His only attempt to resolve his debts has been to state that he filed for Chapter 13 protection, although he failed to provide evidence of that filing. AG ¶¶ 20(c), (d), and (e) do not apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Applicant is 53 years old and presumed to be a mature adult. His significant debts led to his filing for bankruptcy protection in 1998 and in 2000. He has been aware that delinquent debts are a security concern since he completed his security clearance application in July 2010. However, over the past year, he has made no effort to resolve these debts. Although bankruptcy is a legitimate method to deal with overwhelming debt, Applicant's three filings, and his own admissions, indicate that he is unable to maintain a solvent financial status.

Applicants are not required to be debt-free; however, they are expected to act responsibly, develop a plan to resolve their debts, and provide evidence of "concomitant conduct" to implement the plan. Moreover, those who are irresponsible in their financial dealings may be likewise irresponsible in other important obligations, such as safeguarding classified material. Applicant has not demonstrated the good judgment and trustworthiness required of those who protect the Government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.<sup>6</sup>

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.h	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge

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<sup>6</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).